

REMARKS

Claims 24-44 stand rejected under 35 U.S.C. §102(b) in view of US patent No. 6,378,069 (hereinafter Sandler). The Office Communication requests correction of certain informalities in connection with the disclosure of the invention. Applicant respectfully requests reconsideration of the rejections and objection in view of the foregoing amendments and the following remarks.

Claims 1-23 were previously cancelled. Claims 30 and 31 are presently cancelled. Thus, claims 24-29 and 32-44 are pending.

Applicant notes that the informalities noted in the Office Communication have already being corrected by way of the preliminary amendment concurrently filed with the present application. Thus, the objection to the disclosure noted in the Office Communication should be withdrawn.

MPEP §2131 provides that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. The identical invention must be shown in as complete detail as contained in the claim. The elements must be arranged as required by the claim.

Claim 24 is directed to a data communication system for updating software stored in a storage device of a first computer. Amended claim 24 in part recites a control software configured to compare a respective data rate provided by respective ones of a plurality of transmission media available for updating software. The control software is further configured to select one of the plurality of transmission media based on a result of the data rate comparison. At least paragraph 55 of the US patent application of the present invention provides express or implied support to the foregoing amendment.

Applicant respectfully submits that the Sandler reference nowhere describes or suggests a control software configured to compare a respective data rate provided by respective ones of a plurality of transmission media available for updating software. Moreover, Sandler nowhere describes or suggests any control software configured to select one of the plurality of transmission media based on a result of the data rate comparison. Anticipation under 35 U.S.C. §102 requires that "The identical invention must be shown in as complete detail as contained in the ...claim." (Citations omitted). Therefore, Applicant respectfully requests that the Examiner withdraw the Section 102 rejections of claim 24 and claims depending from such a claim.

**Serial No. 10/527,433**

**Atty. Doc. No. 2002P10529WOUS**

Independent claim 43 is directed to a first computer in a data communication system and independent claim 44 is directed to a method for updating software. Since Sandler, as discussed above, fails to describe or suggest each of the structural and/or operational relationships of the claimed invention, Applicant respectfully requests that the Examiner also withdraw the Section 102 rejections of claims 43 and 44.

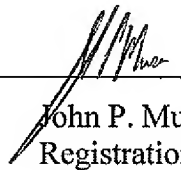
Conclusion

It is respectfully submitted that each of the claims pending in this application recites patentable subject matter and it is further submitted that such claims comply with all statutory requirements and thus each of such claims should be allowed.

The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

Dated: 8/11/08

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